Central Management Company, Incorporated d/b/a Magnolia Manor Nursing Home Incorporated *and* Local 100, Service Employees International Union, AFL–CIO. Case 15–CA–9837–1

30 June 1987

DECISION AND ORDER

BY MEMBERS JOHANSEN, BABSON, AND STEPHENS

On 5 May 1986 Administrative Law Judge J. Pargen Robertson issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions,[1] to modify his remedy,[2] and to adopt the recommended Order.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Central Management Company Incorporated d/b/a Magnolia Nursing Home, Shreveport, Louisiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order, except that the attached notice will be substituted for that of the administrative law judge.[4]

[1] The judge principally relied on *NLRB v. Burnup & Sims*, 379 U.S. 21 (1964), and its progeny in finding that the Respondent violated Sec. 8(a)(3) and (1) of the Act. Although the Court in *Burnup & Sims* held only that the discharges in that case violated Sec. 8(a)(1) of the Act and expressly avoided reaching the question whether it violated Sec. 8(a)(3), the finding of the 8(a)(3) violation in this case is proper. In *Burnup & Sims*, the Court accepted the lower court's holding that the employer had a good-faith belief that the employees had, in the course of union soliciting, threatened that the union would dynamite the plant if it did not obtain the necessary number of union authorization cards, and that, therefore, there was no conclusive evidence that the employer, impelled by animus against the union, was simply punishing the employees for soliciting. Here we are affirming the judge's finding that the Respondent had no good-faith belief that McKnight had engaged in misconduct in the course of her soliciting. The finding of the 8(a)(3) violation therefore follows. In any event, the remedy remains the same regardless of whether we find only the 8(a)(1) violation.

[2] In accordance with our decision in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), interest will be computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

[3] The General Counsel has requested us to include a visitatorial clause in the Order that would authorize the Board to obtain discovery from the Respondent under the Federal Rules of Civil Procedure in order to monitor the Respondent's compliance with this Order. We find it unnecessary to include such a clause in the Order in this case. Accordingly, we deny the General Counsel's request.

[4] We have modified the notice to correct certain inadvertent omissions.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT promulgate and implement a no-solicitation rule designed to discriminatorily prohibit you from engaging in union activities.

WE WILL NOT suspend you because you engage in union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make Annie McKnight whole for any loss she may have suffered by reason of our discrimination against her, with interest.

WE WILL remove from our records any reference to our suspension of Annie McKnight on 19 November 1985 and notify her in writing that this has been done and that our unlawful suspension will not be used against her in any way.

CENTRAL MANAGEMENT COMPANY INCORPORATED D/B/A MAGNOLIA MANOR NURSING HOME

Charlotte White, Esq., for the General Counsel.
John B. Waldrip, Esq. (Partee, Leefe, Waldrip & Roniger), of New Orleans, Louisiana, for the Respondent.

DECISION

STATEMENT OF THE CASE

J. PARGEN ROBERTSON, Administrative Law Judge. This case was heard in Shreveport, Louisiana, on 20 and 21 February 1986. The charge was filed on 19 November, amended on 23 December, and second amended on 30 December 1985. The complaint, which issued on 2 January 1986, alleges that Respondent promulgated and implemented an unlawfully broad no-solicitation rule in violation of Section 8(a)(1), and that Respondent suspended three employees from work in violation of Section 8(a)(1) and (3) of the Act.

On consideration of the entire record and briefs filed by the General Counsel and Respondent, I make the following

FINDINGS[1]

In August or September 1985 Respondent learned of a union campaign at its Shreveport, Louisiana nursing home. Respondent's administrator, Pamela Kennedy, testified that she first learned of the union campaign when she discovered union organizer Diane Washington in the nursing home.

On 20 September 1985 Respondent was presented with a petition signed by approximately 32 employees[2] expressing, among other things, that a majority of the employees had decided to form a union.

Respondent stipulated that it was aware that alleged discriminatees Annie McKnight, Pamela Taylor, and Judith Williams were engaged in activities in support of the Union. McKnight, Taylor, and Williams all signed the 20 September petition.

Administrator Kennedy testified that she was aware that while at work in the nursing home, employees were wearing union buttons, soliciting other employees to sign union authorization cards, and "talking about the Union, discussing it, persuading other employees to vote for the Union." According to Kennedy, Respondent did not tell any employee that the employees could not wear union buttons, sign a petition, or talk about the Union during working hours.

However, Kennedy testified, the Respondent started experiencing problems between employees that supported the Union and those that opposed the Union. Kennedy recalled two incidents that illustrated to Respondent the conflict between employees supporting and opposing the Union. The first incident involved an argument between employees Pauline Washington and Patricia James in a patient's room, over which of the two employees would clean up a broken vase. Pauline Washington told Kennedy that the problem was not over the broken vase, but was over Patricia James questioning Washington on how she was going to vote.

The second incident recalled by Kennedy admittedly occurred after Kennedy announced the alleged unlawfully broad no-solicitation rule. Kennedy testified that at "the very end of November [1985]," a second incident occurred that involved an argument between employees Cassandra Bryant and Vernea Scott. Cassandra Bryant told Director of Nursing Wendy Cowart that Vernea Scott "was on her about who she was going to vote for and kept on her and on her and on her about it."

Kennedy said there were several incidents with employees being called into patients' rooms and questioned about how they were "going to vote, not to be secretive about it and they just stayed on these employees."

On 30 October Administrator Kennedy called all the employees together and read the following statement:

> Several employees have complained to me lately that they have been harassed and threatened by people pushing the union, here at work. Employees who are doing this while they are suppose [sic] to be working are violating the rules. You can not engage in harassments, threats or union salesmanship while you are suppose [sic] to be working. You can not push the union in patient care areas. You can not sell this union talk to other employees who are suppose [sic] to be working and YOU, Patricia James have been warned about it before. If I hear another complaint about you bothering people in any of these ways, you will be terminated. There are others who have done this to [sic].
>
> To the rest of you—if they continue to harass you at work they will be disciplined also. Working time is for patient care, NOT for pushing union.
>
> If any of you are bothered again by Patricia James or anyone else while you are suppose [sic] to be working, all you need to do is let me know.

The General Counsel alleges that the above address by Kennedy included an unlawfully broad no-solicitation rule.

On 19 November Annie McKnight was suspended from work for that day. According to Administrator Kennedy, on 18 November she decided to suspend McKnight, Pamela Taylor, and Judith Williams because of reports to management that those three were harassing other employees about the Union. According to Kennedy, three employees, Annette Byrd, Mark Troegel, and Joyce Parks complained on 18 November that they had been harassed by McKnight, Williams, and Taylor while at work on 17 November.

Assistant Director of Nursing Jan Basco testified that on 18 November employee Joyce Parks complained that she had been harassed while at work on 17 November. Basco prepared the following statement, which was signed by Joyce Parks:

> [Judith Williams] is always the one to start asking about what you gonna vote and all that stuff. She asked me she said what you gonna vote. I said no. But its none of your business what I'm going to vote. Then she said why is everybody keeping it a secret. That's when Pam but [sic] in. Pam said yea Cassandra got her brainwashed. Telling her what to vote. I said no. I'm grown I don't need someone telling me what to vote.

According to her statement to Basco, Parks was in a patient's room, along with employee Annette Byrd, when the above-mentioned incident occurred.

Annette Byrd testified that she complained on 18 November that she had been harassed on the previous day:

> Okay. In the morning time when I come in, I have to empty my barrels. So I went, you know, down the North Wing there to empty my barrels. That's when Judy Williams beckoned for me to come there in Ms. Chandler and Ms. Cohn's room. Pam Taylor was standing in there. She asked me what I

[1] Neither jurisdiction nor status of the Charging Party is at issue. Respondent, in its answer, admitted that it is a Louisiana corporation engaged in the operation of a proprietary nursing home in Shreveport, Louisiana, and is an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act. Respondent also admitted that the Charging Party is a labor organization within the meaning of Sec. 2(5) of the Act

[2] Pamela Taylor, one of the alleged discriminatees, appears to have signed the petition twice Taylor testified that one of the two signings of her name was made by someone else.

was going to vote for. I told her I didn't think it was their business. By that time—and I walked out of the room—McKnight was coming up the hall. I went to empty the barrels on the North Wing. I come back and she stopped me again. Judy Williams asked me the same question. I told her the same answer.

Byrd testified that Williams and Taylor were in the room and that Annie McKnight came in later. Byrd recalls something was said about Martin Luther King dying in vain and that Judy Williams "just kept on asking," she "just went on and on." According to Byrd, McKnight did not say anything. Byrd did not argue because it was "not necessary to argue." After a while, Byrd said, she "just walked out" of the room. Byrd testified that later she stopped by the room again when Joyce Parks was "called." Byrd said that she did not know if she was called back to the room when Parks went in, but that she did stop by and she heard the women ask Parks how she was going to vote.

Later, as Byrd and employee Mark Troegel were taking lunch orders from all the employees, McKnight, Williams, and Taylor stopped Troegel at the door. Byrd walked on and did not hear the conversation.

Mark Troegel testified that as he was leaving to pick up lunch with Annette Byrd on 17 November, Judy Williams, Annie McKnight, and Pam Taylor were standing at the front door and Pam Taylor asked him how he was going to vote. According to Troegel, he replied to Taylor that "it wouldn't [sic] none of her damn business and [he] kept walking." Troegel testified that after he and Byrd returned with the employees' lunches he had an incident with Judy Williams at the timeclock:

A. Well, first she asked me what I was going to vote. I believe I told her the same thing. I don't think it's none of her damn business, but I went on to say to her that the majority of the employees had given up on the Union because the Union wasn't doing nothing for them. Everybody wasn't going for the Union and I told her that. She got all hostile towards me.

Q. Okay. You used the word she got hostile toward you. What did she do?

A. She started yelling at me.

Q. In a loud voice?

A. Yes, she was yelling in a loud voice.

Q. What did she say—do you remember?

A. Let me think a minute.

Q. You had just told her you didn't feel the majority of the employees would vote for it and she started yelling. Do you remember what she said?

A. She just asked me whether I was going to vote for it. I told her. I don't know—it was just a long, drawn out conversation. I can't remember every word.

Q. Were any of the other two there at the time?

A. Huh?

Q. Were any of the other two with her at the time?

A. I can't say, I'm not sure.

Only Annie McKnight reported to work on 19 November. It was Respondent's policy not to discipline an employee unless the employee was at work. For that reason only McKnight was suspended on 19 November. However, Respondent planned to suspend Williams and Taylor when they next reported for work on 23 November.

When McKnight was told of her suspension she was also told not to come to the company dinner party planned at the Holiday Inn (Holi-Dome) on 20 November.

On 20 November employees McKnight, Williams, and Taylor appeared at the company dinner party at the Holi-Dome. The three were stopped at the door by Supervisor Chuck Hudgens and told that they could not attend the party. Williams and Taylor complained that Respondent could have told them earlier that they were not welcome. Taylor admits saying to Hudgens "all of you are son-of-a-bitches."

After spending some time in the hotel bar, McKnight, Williams, and Taylor, along with union employees Diane Washington and Jon Barton, went to the area of the ladies restroom. The women admittedly asked numerous employees about how they would vote as the employees came from the company party to the restroom.

Respondent's director of nursing, Wendy Cowart, testified as follows regarding the 20 November dinner party and the ladies restroom:

A. Well, I was sitting at my little table where I was sitting with several people. I don't recall which employees I was with and one of the employees came up to me and she said, Ms. Cowart, I just came back from the bathroom—this was the very beginning of all the trouble in the bathroom.

Q. Now, let's try to name names if we remember them. Who was the employee?

A. Okay. Cassandra Bryant walked up to me and she said, Ms. Cowart, you won't believe what's going on in the bathroom. I said, what are you talking about and she said, Alma Joyce—that's Alma Joyce, I believe her last name is Brown, just came and told me that she was cornered in the bathroom by three employees, Annie McKnight, Judy Williams and Pam Taylor, regarding the union issue. That rather than just ask her a question, they followed her in the bathroom, waited while she used the facility, when she got out, she told them which way she was going to vote. I don't know what she said, maybe she said no, I don't know.

Q. Okay.

A. She said they continued to ask her, why aren't you going to vote this way.

Q. So she reported to you that they were in the bathroom talking to employees about the union?

A. Yes.

Q. What did you do?

A. Well, one of the employees at my table then asked would I please go with her, she was afraid to go.

Q. Who was the employee, please?

A. I don't recall.

Q. Okay.

A. I don't recall who. I went to the bathroom with this employee and as I was walking around the corner, there's a short hallway from where the party was and I went down this hallway and I could see them standing there sort of halfway blocking the entrance into the bathroom, all five of them, Diane Washington, Jon Barton, Pam Taylor, Judy Williams and Annie McKnight. As I walked by, there were several comments made about me. Look at that person in that pink and black dress, thinks she knows—she's hot stuff.

Q. So, what did they say, look at that person?

A. Well, look at that bitch.

Q. Okay.

A. I didn't want to say that word but you know it was said.

Q. All right, please tell the Judge what was said.

A. Okay. She said—one of the persons standing there, a voice said, look at that bitch in the pink and black dress, thinks she's hot stuff. Another voice that was different said, something to the effect that, yeah, she sure does swing those hips good and another person made another offhand remark about the way I was dressed. I went on in the bathroom. Of course, as you're passing by, you're not going to be able to recognize a voice. I don't know who said which lines. I went on in the bathroom—

Q. What about of the three? Did it come from this group of three employees or did it come from someone else?

A. No. It came from the group of the five persons that were blocking the bathroom.

Q. Okay. And they were?

A. Jon Barton—

Q. The three plus—

A. The three employees that are named and then Jon Barton and Diane Washington.

Q. Okay. Go ahead.

A. It came from this group, they were the only group there.

Q. Okay.

A. I went on by, went into the bathroom, three of the employees—the three employees, Judy Williams, Pam Taylor, Annie McKnight, followed me into the bathroom. I had another person in there with me. I went into the facility, used it, I came out to wash my hands and Pam Taylor—

Q. What did they do?

A. Pam Taylor was standing there shaking her hips like this at me [indicating].

Q. Did she say anything to you?

A. No. She didn't have to. [Laughter].

Q. I notice she thinks it's funny back there, but—

A. She didn't have to say anything. Harassment can be an action.

Q. Did she go—did she use the facilities? Did she use the facilities?

A. No. They were standing there while I did.

Q. All three of them just standing there?

A. Yes.

Q. Were they washing their hands or combing their hair?

A. No. They were standing there watching me do everything I did and mimicking everything I did.

Q. Okay.

A. And to me, this is harassment.

Q. And this other employee—there was another employee with you, too.

A. I don't recall who it was, it was just one of the girls.

Q. Was there another employee with you?

A. Yes.

Q. Okay. Then what happened?

A. Well, I went on back to the—to the party after I finished using the facility and several occasions throughout the evening, employees asked me to go. I believe I probably made eight trips to the bathroom with people who came up to me and said they were afraid to go to the bathroom alone. I did make a couple of trips with Joyce Parks after her bathroom incident where she was involved. She had come back to tell me that and I did make a couple of trips thereafter with her when she had to go to use the facility.

Q. Over how long a period of time did all this occur?

A. Well, the party started around 7:00, I believe and I think we got started about 7:30. The first person may have come to tell me, probably 20 or 30 minutes after the party started and the party broke up about 10:15. It was the entire time.

Q. Okay.

A. Employees would come back and say, I just went to the bathroom—and there was a large group of people at this party, and different people are going to go to the bathroom at different times. It went on all night long.

Q. Now, you said you went probably eight times between the times you had to go and the ones you went with the other employees. What kind of comments were—you've already told us about the first time you went, what was said. Any other type of comments made to you and can you identify who made them?

A. I can't identify who but I know that it came from the three employees. They would talk together as I—they would follow me in every time I made a trip with an employee.

Q. Every time? Eight times you went to the ladies room?

A. Every time.

Q. Now—and how many times would you say would be with other employees?

A. All of them. I didn't—I went one time by myself, I believe.

Q. And all eight times they followed you in, is that what you're testifying to?

A. Yes, they did. Yes.

Q. What would they do those eight times that they would follow you and the other employees?

A. They made—they made offhand comments that degraded me.

Q. Such as?

A. Such as, look at her swing those hips, look at her move her body, look at that poor white trash, look at her wash the black off her hands. Things like that that are humiliating.

Following Respondent's case, the General Counsel recalled McKnight, Taylor, and Williams in rebuttal of, among other things, evidence regarding the 20 November bathroom incident. However, none of the three disputed the testimony of Wendy Cowart regarding that incident. I am convinced Cowart was truthful in her testimony regarding the bathroom incident.

On 23 November Annie McKnight was again suspended for 1 day. Williams and Taylor were also suspended for the day of 23 November.

Conclusions

A. *The Alleged Illegal No-Solicitation Rule*

In *Our Way, Inc.*, 268 NLRB 394, 395 (1983), the National Labor Relations Board held:

> Although we do not agree with the judge's application of *T.R.W. Bearings*, we do agree with the judge's finding that the Respondent enforced unlawful rules prohibiting union solicitation by its employees. As fully set out in the judge's decision, the Respondent's rules as orally modified, as discriminatorily applied only to union solicitation, and as enforced against Betty J. Skidmore violate the Act. For these reasons, we find that the recommended Order is necessary to remedy the Respondent's violations of the Act.

The incident record shows that Respondent also promulgated and discriminatorily applied a rule against union solicitation.

Administrator Kennedy admitted that Respondent's no-solicitation rule has never been enforced and, in fact, Respondent permits solicitation. Kennedy testified:

> We have a lot of things. They buy Avon, some of their kids are selling something from school—plate lunches.

Kennedy admitted that some of the solicitation occurred during working time.

It is true that Kennedy cautioned Respondent's employees against "harassment" and "threats." However, as shown above, the employees were also told "You cannot engage in . . . union salesmanship while you are suppose [sic] to be working. You cannot push the union in patient care areas. You cannot sell this union talk to other employees who are suppose [sic] to be working and you, Patricia James, have been warned about it before. If I hear another complaint about you bothering people in any of these ways, you will be terminated."

The above statement illustrates that union solicitation was to receive special treatment. Even though Administrator Kennedy admittedly permitted her employees to talk and solicit products and causes during working time, union talk or solicitation was prohibited after 30 October.

The law does not permit such a discriminatory application and I find that Respondent violated the law by its action in prohibiting union solicitation.

B. *The 19 November Suspension*

On 18 November Administrator Kennedy decided to suspend McKnight, Williams, and Taylor for 1 day. Of the three, only McKnight was suspended on 19 November because only McKnight of the three reported to work before 23 November.

The evidence is not in dispute that the decision to suspend McKnight, Williams, and Taylor was based on union activities (i.e., the three allegedly harassed employees Byrd, Troegel, and Parks about how they would vote in the upcoming election). In cases of this type the proper standard for determining whether the law was violated was announced by the Supreme Court in *NLRB v. Burnup & Sims*, 379 U.S. 21 (1964), and by the Board in *Rubin Bros. Footwear*, 99 NLRB 610 (1952). The Board recently restated that ruling in *K & K Transportation Corp.*, 262 NLRB 1481 (1982). In *K & K Transportation,* as well as in most other cases, the issues concerned alleged employee misconduct during a strike. However, the rule has also been applied in situations like the instant case in which employees were admittedly engaged in union activity. The basic general rule is that once it has been established that an employee is engaged in union or protected activity, the burden shifts to the employer who must demonstrate an honest belief that the employee was engaged in misconduct. Once an employer establishes an honest belief that the employees engaged in misconduct, the burden shifts back to the General Counsel to prove that the employee did not, in fact, engage in misconduct.

Because only McKnight was actually suspended on 19 November, I shall restrict my inquiry to her. McKnight was suspended because she allegedly harassed other employees regarding the Union. Because it was Respondent's belief that Mcknight was engaged in harassment over the upcoming union vote, it is obvious, and I find, that McKnight was suspended because Respondent suspected her of engaging in union activities.

It has long been established that employees are protected from discriminatory action by an employer for suspected union activity even though the employee may not have actually engaged in the suspected activity. Therefore, it is of no moment whether McKnight actually engaged in union activities on 17 November. The action against McKnight because of her suspected union activities is illegal unless the evidence shows that Respondent satisfied the rule mentioned above (*NLRB v. Burnup & Sims*, supra).

The testimony of Kennedy, Cowart, and Basco shows that perhaps two matters influenced their decision to suspend McKnight. One, of course, was the complaints made by employees Byrd, Troegel, and Parks. Second, Kennedy and Basco also expressed concern about the three employees, McKnight, Williams, and Taylor, being in the same patients' room on 17 November. Basco did

not work on 17 November, but she testified that she left work assignments for the LPNs that supervised the employees that Sunday, placing Williams, Taylor, and McKnight on three separate wings of the nursing home.

Despite Basco's testimony, the record failed to show that Respondent investigated why Williams, Taylor, and McKnight were in the same patients' room on 17 November. Annie McKnight testified that she, Williams, and Taylor were told to go to the north wing and work with employee Versie Doughtery and that they were helping patients into the whirlpool on the north wing during the time of the incident that resulted in her discipline. McKnight's testimony in that regard was unrebutted by Respondent. Therefore, I credit her testimony and find that the record shows that McKnight, Williams, and Taylor did not engage in misconduct by being in the same patient's room in the north wing on 17 November.

Concerning the alleged harassment, there is a serious question whether anyone was harassed on 17 November. Moreover, as to Annie McKnight, the record contains no evidence that she engaged in harassment. Respondent's witness Annette Byrd testified that Annie McKnight said nothing to her. The statement taken from employee Joyce Parks and the testimony of Respondent witness Mark Troegel do not include a single comment by Annie McKnight on 17 November. Moreover, there is no evidence to show that McKnight otherwise participated in any harassment. Therefore, I find that the record fails to support Respondent's contention that it had an honest belief that McKnight had engaged in misconduct by harassing other employees. In fact, the evidence relied on by Respondent shows that McKnight did nothing to harass anyone on that date.

The record reveals that Annie McKnight was suspended on 19 November because Respondent suspected that she was engaged in union activities. The record does not prove that Respondent had an honest belief that McKnight engaged in misconduct and, in fact, the record demonstrates that McKnight did not engage in misconduct as alleged on 17 November. Therefore, under the standard applied in *Rubin Bros.* and *NLRB v. Burnup & Sims*, I find that Respondent violated Section 8(a)(1) and (3) by suspending Annie McKnight on 19 November.

C. *The 23 November suspension*

As shown above, Respondent decided to suspend Williams and Taylor, along with McKnight, on 18 November because of the complaints of employees Parks, Byrd, and Troegel. Williams and Taylor were not suspended until 23 November when they next reported to work. Annie McKnight was suspended a second time on 23 November because she attended the company party on 20 November and, along with Williams and Taylor, allegedly engaged in misconduct in or near the ladies bathroom during that party.

I am convinced that McKnight, Williams, and Taylor engaged in misconduct on the evening of 20 November that justified Respondent's action in suspending each of them on 23 November.

The evidence shows that for a considerable period during the evening of 20 November, while Respondent was conducting its employees' party, McKnight, Williams, and Taylor, along with union agents Diane Washington and Jon Barton, remained near and in the ladies bathroom. The testimony illustrates that each employee that visited the ladies bathroom was forced to undergo questioning about how they would vote. Those employees that answered negatively or refused to answer were ridiculed. Moreover, as shown above, supervisors were ridiculed through words and mimicry.

The alleged discriminatees offer no justification for their 20 November activities. Those activities in a public place were intentionally embarrassing to all involved, including Respondent. The actions of McKnight, Williams, and Taylor, as well as those of union organizers Barton and Washington, were nonsensical.

The record shows that all three alleged discriminatees actively engaged in harassing activities at the ladies room.

The statement taken from Joyce Parks by Respondent illustrates that Judith Williams and Pamela Taylor, as well as union agent Washington, engaged in extensive questioning of Parks while Parks was in the ladies room. Parks also testified at the hearing. Her testimony at the hearing revealed that Annie McKnight also engaged in harassment by insisting that Parks take some papers.

Employee Barbara Bryant testified in support of Parks, that Parks was harassed in the bathroom by Williams, Taylor, and McKnight, along with union agents Barton and Washington.

The testimony of Wendy Cowart, noted above, shows that all three alleged discriminatees were acting together during the bathroom incident. For example, Cowart testified that she passed Barton, Washington, McKnight, Williams, and Taylor in the hall and that Williams, Taylor, and McKnight followed her into the bathroom. In the bathroom Taylor mimicked Cowart (see above).

Unlike the circumstances surrounding the incidents of 17 November, Respondent had an honest belief that Williams, Taylor, and McKnight engaged in misconduct at the company party on 20 November. As noted above, substantial portions of that evidence went unrebutted. Therefore, I find that Respondent did not violate the law when it suspended for 1 day, Williams, Taylor, and McKnight on 23 November. *K & K Transportation Corp.*, 262 NLRB 1481 (1982).[3]

CONCLUSIONS OF LAW

1. By promulgating and implementing an illegally broad no-solicitation rule on and after 30 October 1985

[3] The General Counsel failed to show that the alleged discriminatees were treated in a disparate fashion There was no showing that any other employees had ever engaged in similar misconduct Additionally, because the party occurred during nonwork hours, the no-solicitation rule, which I find was illegal, did not come into play in the 23 November suspensions of McKnight, Williams, and Taylor. Even though the decision to suspend Williams and Taylor on 18 November may have been illegal if that decision had been effectuated before the company party, I find that all three employees engaged in misconduct at the party. I further find that all three would have been suspended because of their 20 November misconduct in the absence of union or protected activities. See *Wright Line*, 251 NLRB 1083 (1980).

because of its employees' union organizing activities, Respondent violated Section 8(a)(1) of the Act.

2. By suspending employee Annie McKnight on 19 November 1985, Respondent has engaged in conduct violative of Section 8(a)(1) and (3) of the Act.

3. Respondent did not otherwise engage in unfair labor practices as alleged in the complaint.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, I shall order it to cease and desist therefrom, and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent has illegally suspended its employee Annie McKnight in violation of Section 8(a)(1) and (3) of the Act, I shall order that Respondent make McKnight whole for any loss of earnings she may have suffered as a result of the discrimination against her. Backpay and interest shall be computed in the manner described in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977).[4]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Central Management Company, Incorporated d/b/a Magnolia Manor Nursing Home Incorporated, Shreveport, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interfering with, restraining, or coercing its employees in exercising rights guaranteed them by Section 7 of the Act in violation of Section 8(a)(1) of the Act by promulgating and implementing a no-solicitation rule designed to discriminatorily prohibit employees from engaging in union activities.

(b) Suspending its employees because of their union activities.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Annie McKnight whole for any loss she may have suffered as a result of its discrimination against her in the manner set forth in the remedy section of this decision.

(b) Remove from Annie McKnight's personnel files and all other records of Respondent, any reference to its suspension of McKnight on 19 November 1985, and notify McKnight in writing that this has been done, and that evidence of its unlawful suspension will not be used as a basis for future personnel action against McKnight.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Shreveport, Louisiana facility copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[4] See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."